



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

OCT 22 2014

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Sarah T. Sullivan  
Stinson Leonard Street  
1201 Walnut Street  
Kansas City, MO 64106

Re: Administrative Consent Order EPA-5-15-113(a)-MI-01

Dear Ms. Sullivan:

Enclosed is an executed original of the Administrative Consent Order regarding the above captioned case. If you have any questions about the Order, please contact me at (312) 886-6797.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sarah Marshall", is written over a horizontal line.

Sarah Marshall  
Chief  
Air Enforcement and Compliance Assurance Section (MI/WT)

Enclosure

cc: Thomas Hess, Enforcement Unit Chief  
Michigan Department of Environmental Quality

Janis Ransom, Cadillac District Office Supervisor  
Michigan Department of Environmental Quality

Scott Pryde, Environmental Health and Safety Manager  
The Hillshire Brands Company

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>EPA-5-15-113(a)-MI-01</b>
	)	
<b>The Hillshire Brands Company</b>	)	<b>Proceeding Under Sections 113(a)(1) of</b>
<b>Traverse City, Michigan</b>	)	<b>the Clean Air Act,</b>
	)	<b>42 U.S.C. § 7413(a)(1)</b>
_____	)	

**Administrative Consent Order**

1. The Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, is issuing this Order to The Hillshire Brands Company (Hillshire), under Sections 113(a)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(1).

**Statutory and Regulatory Background**

**Michigan State Implementation Plan**

2. Each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the CAA, 42 U.S.C. § 7410.
3. On May 6, 1980, EPA approved Michigan Rule 336.1201 as part of the federally enforceable Michigan State Implementation Plan (SIP). 45 Fed. Reg. 29790 (May 6, 1980).
4. R 336.1201 of the Michigan SIP states, "a person shall not install, construct, reconstruct, relocate, or alter any process, fuel-burning, or refuse-burning equipment, or control equipment pertaining thereto, which may be a source of an air contaminant, until a permit is issued by the commission. This shall be known as a permit to install and shall cover construction, reconstruction, relocation, and alteration of equipment where such is involved."

5. On July 26, 1982, and June 11, 1992, EPA approved Michigan Rules 336.1101 and 336.1116, respectively, as part of the federally enforceable Michigan SIP. 47 Fed. Reg. 32117 and 57 Fed. Reg. 24752.

6. R336.1101 states that “air contaminant” means “a dust, fume, gas, mist, odor, smoke, vapor any combination thereof.” 47 Fed. Reg. 32117 (July 26, 1982).

7. R 336.1116(g) states that “person” includes “any of the following”: An individual person; association; partnership; firm; company; corporation; business trust; and other entity recognized by law as the subject of rights and duties.” among other things. 57 Fed. Reg. 24752 (June 11, 1992).

8. R 336.1116(n) states that “process” or “process equipment” means “any equipment, device, or contrivance and all appurtenances thereto, for the changing any materials ... the use of which may cause discharge of an air contaminant into the outer air.” 47 Fed. Reg. 32117 (July 26, 1982).

### **Findings**

9. At all times relevant to this Order, Hillshire was the owner and/or operator of a commercial bakery located in Traverse City, Michigan (the facility).

10. Hillshire is a person as that term is defined in the Michigan SIP.

11. Hillshire’s facility contains process equipment as defined in the Michigan SIP.

12. The process equipment at the facility causes discharge of volatile organic compounds (VOC) into the outer air.

13. VOC is a gaseous emission to the air and is an air contaminant as defined in the Michigan SIP.

14. On November 7, 2013, EPA inspected the Hillshire facility in the company of staff from the Michigan Department of Environmental Quality (MDEQ) Cadillac District Office.

15. During the inspection, EPA confirmed with the facility and the MDEQ inspectors that the facility did not then or ever in the past have any type of air permit issued by MDEQ.

16. On December 5, 2013, EPA issued a Request for Information to Hillshire pursuant to Section 114 of the CAA, requesting, among other things, the calculation of annual actual emissions of VOC and annual potential to emit VOC from 2009 through issuance of the information request.

17. On February 27, 2014, Hillshire submitted its response to EPA, including a calculation of potential to emit VOC that exceeded 40 tons per year.

18. In early April 2014, EPA staff spoke by phone with MDEQ staff, who confirmed that MDEQ had not yet received any permit application from Hillshire.

19. On May 6, 2014, EPA issued a Notice and Finding of Violation (NOV/FOV) to Hillshire. In the NOV/FOV, EPA alleged, among other things, that Hillshire constructed and installed an air contaminant source at its Traverse City, Michigan, location without first obtaining a permit to install, in violation of the Michigan SIP at Rule 336.1201.

20. On June 10, 2014, representatives of Hillshire and EPA discussed the May 6, 2014, NOV/FOV.

#### **Compliance Program**

21. Hillshire must achieve, demonstrate and maintain compliance with the Michigan SIP at its Traverse City, Michigan facility by completing the tasks set forth in Paragraphs 22-23, below.

22. Within 30 days of the effective date of this Order, Hillshire shall submit to MDEQ a complete and accurate permit application in accordance with the Michigan SIP at R. 336.1203. Hillshire shall simultaneously submit a copy of its application, including the accompanying calculations, to EPA.

23. Hillshire must send the submission required by this Order to:

Attention: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

#### **General Provisions**

24. This ACO does not affect Hillshire's responsibility to comply with other federal, state and local laws.

25. This ACO does not restrict EPA's authority to enforce any section of the CAA.

26. Nothing in this ACO limits the EPA's authority to seek appropriate relief, including penalties, under Section 113 of the CAA, 42 U.S.C. § 7413, for Hillshire's alleged violations of the Michigan SIP.

27. Failure to comply with this ACO may subject Hillshire to penalties of up to \$37,500 per day for each violation under Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

28. The terms of this ACO are binding on Hillshire, its assignees and successors. Hillshire must give notice of this ACO to any successors in interest prior to transferring ownership of the facility and must simultaneously verify to EPA, at the above address, that it has given the notice.

29. EPA may use any information submitted under this ACO in an administrative, civil, judicial, or criminal action.

30. Hillshire neither admits nor denies the Findings listed above and agrees to the terms of this ACO.

31. Hillshire waives all remedies, claims for relief and otherwise available rights to judicial or administrative review that it may have with respect to any issue of fact or law set forth in this ACO, including any right of judicial review under Section 307(b) of the CAA, 42 U.S.C. § 7607(b).

32. This ACO is effective on the date of signature by the Director of the Air and Radiation Division. This ACO will terminate two years from the effective date, provided that Hillshire has complied with all terms of the ACO throughout its duration.

10/8/2014  
Date

Paul Clark  
Name  
Title Plant Mgr.  
The Hillshire Brands Company

10/22/14  
Date

George T. Czerniak  
George T. Czerniak  
Director  
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent the Administrative Consent Order, EPA Order No. EPA-5-15-113(a)-MI-01, by certified mail, return receipt requested, to:

Scott Pryde  
Environmental Health and Safety Manager  
The Hillshire Brands Company  
2314 Sybrandt Road  
Traverse City, Michigan 49684

7011 1150 0000 2639 3076

Sarah T. Sullivan  
Stinson Leonard Street  
1201 Walnut Street  
Kansas City, MO 64106

7011 1150 0000 2639 3052

I also certify that I sent a copy of the Administrative Consent Order, EPA Order No. EPA-5-15-113(a)-MI-01, by first-class mail to:

Janis Ransom, District Supervisor  
Cadillac District Office  
Michigan Department of Environmental Quality  
120 West Chapin Street  
Cadillac, Michigan 49601-2158

Thomas Hess, Enforcement Unit Chief  
Michigan Department Environmental Quality  
Air Quality Division, Enforcement Unit  
Constitution Hall, 2<sup>nd</sup> Floor South Tower  
525 West Allegan  
Lansing, Michigan 48933-1502

On the 24 day of October 2015.

Kathy Jones  
for Loretta Shaffer, Program Technician  
AECAB, Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 7011 1150 0000 2639 3076  
7011 1150 0000 2639 3052